

HONORABLE THOMAS S. ZILLY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MARIA DEL ROSARIO JARAMILLO
BALLESTEROS, as Personal
Representative of the ESTATE OF JAIME
CARRILLO MONTENEGRO; MARIA
DEL ROSARIO JARAMILLO
BALLESTEROS, an individual; M.J., an
individual and minor; RAQUEL JAVELA
ROJAS, as Personal Representative of the
ESTATE OF JAIME EDUARDO
HERRERA ROMERO; RAQUEL JAVELA
ROJAS, an individual, et al

Plaintiffs,

vs.

THE BOEING COMPANY, a Delaware
Corporation,

Defendant.

CASE NO.: 2:22-cv-393 TSZ

PLAINTIFFS' OPPOSITION TO
DEFENDANT BOEING'S MOTION TO
DISMISS ON THE GROUNDS OF FORUM
NON CONVENIENS

ORAL ARGUMENT REQUESTED

NOTED FOR CONSIDERATION:
MARCH 10, 2023

INTRODUCTION

Boeing spends approximately 22 pages trying to convince this court that it would be more convenient to litigate this product liability action in Colombia instead of the United States. Nevermind that the public and private factors generally sway in keeping the case in the defendant's home country, when the defendant is a manufacturer defendant in a product liability action, as the case centers on events that occurred well before the crash at hand. Important, complex and material documents necessary for plaintiffs' product liability claims include engineering drawings, critical testing data and reports, Failure Modes and Effects Analysis, and other documents related to the design and manufacture of the subject engine and its component parts. To have these critical documents translated into Spanish will be almost impossible as technical translations lose specificity and detail, ie, important things get lost in translation.

On the other hand, plaintiffs will stipulate to the factual findings of the Colombian investigators so jurisdiction over them is not necessary. Damages documents are not that extensive, as decedents were long time employees of airlines, and plaintiffs will translate any material damages documents from Spanish to English. There are not many witnesses of the crash, if any, in Colombia, whereas, almost all of the product liability witnesses are in the United States, and will testify in English.

But beyond those nearly impossible tasks, Boeing fails to mention that Plaintiffs will not be allowed to pursue their product liability claim in Colombia whatsoever, as the Grupo de Investigacion de Accidentes Aereos Colombia ("GRIAA") Report and its probable cause findings cannot be challenged in Colombian civil courts. They are given full evidentiary value and relied on exclusively by the courts as the expert opinion. In the instant matter, the GRIAA Report found that the cause of the crash was due to actions or inactions of the airline during its operation and maintenance of the plane. There is no mention of a product liability design defect, nor could a claim be made in Colombia concerning this crash. With respect to this case, there is no adequate, alternative or appropriate forum in Colombia to resolve product liability claims brought by the Plaintiffs in Colombia. It simply is not possible. The case must stay in the United

1 States.

2 **PLAINTIFFS WILL NOT BE ABLE TO PURSUE THEIR PRODUCT LIABILITY**
 3 **CLAIM IN COLOMBIA**

4 Plaintiffs will not be able to pursue a product liability case in Colombia because the
 5 Grupo de Investigacion de Accidentes Aereos Colombia (“GRIAA”) has already issued its final
 6 report, finding that the cause of the crash was due to actions or inactions of the airline during its
 7 operation and maintenance of the plane. Piquero DECL ¶5.

8 The report produced by the GRIAA corresponds to the exercise of the powers enshrined
 9 in the aviation regulation of Colombia (RAC), with respect to the investigation of aircraft
 10 accidents. The GRIAA’s reports play an authoritative role in civil litigation because the findings
 11 of the GRIAA Report cannot be challenged in a Colombian court, as the Report is the sole source
 12 of expert evidence the court in Colombia will consider. Piquero DECL ¶6.

13 There have only been a few cases seeking civil liability for aviation accidents that have
 14 occurred in this country. In all such cases where there has been a report of the GRIAA, related
 15 to the causes of a plane crash, judges have given full evidentiary value and proof to the GRIAA
 16 Report, unless the GRIAA and its wrongdoing was involved in the accident, which is not the
 17 case here. Piquero DECL ¶7.

18 In summary, there is no remedy available at all for these plaintiffs in this particular case
 19 if adjudicated in Colombia. Colombia is not a forum that will entertain plaintiffs’ product
 20 liability claims. In practice, there cannot be an adequate, alternative or appropriate forum in
 21 Colombia to resolve product liability claims brought by the Plaintiffs in Colombian courts where
 22 there exists a GRIAA Report that identifies and attributes the causes of the crash to non-
 23 manufacturing parties, i.e., the airline and its maintenance and crew, in this matter. Piquero
 24 DECL ¶8.

25 Where there is no alternative forum available to hear the claims (product liability in this
 26 case), nor a “potential avenue for redress,” the forum non conveniens motion must be denied.
 27 *Ceramic Corp. or Am. v. Inka Mar, Corp. Inc.*, 1 F.3d 947, 948-949. This is one of the “rare
 28 circumstances” where the remedy provided is “so clearly unsatisfactory that it is no remedy at

1 all.” *Lockman Found v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir 1991)(quoting
2 *Piper Aircraft* 454 US at 254)

3 Boeing’s remaining arguments are moot, but it goes without saying that the United States
4 courts have a superior interest in hearing a case involving its resident manufacturer over courts
5 in Colombia. Virtually all liability documents and witnesses are in the United States. Damages
6 documents and witnesses are very limited. The FNC motion should be denied.

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9 DATED this 8th day of March, 2023.

10
11 **STRITMATTER KESSLER KOEHLER MOORE**

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CERTIFICATE OF SERVICE

On [MONTH, DAY], 2022, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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Dated this 22 day of June, 2022.

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